

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
Amendment of Part 90 of the Commission's Rules	)	
to Improve Access to Private Land Mobile Radio	)	WP Docket No. 16-261
Spectrum	)	
	)	
Land Mobile Communications Council	)	
Petition for Rulemaking Regarding Interim	)	
Eligibility for 800 MHz Expansion Band and	)	
Guard Band Frequencies	)	
	)	RM-11719
Petition for Rulemaking Regarding Conditional	)	
Licensing Authority Above 470 MHz	)	
	)	
	)	RM-11722
	)	

**COMMENTS OF THE UTILITIES TECHNOLOGY COUNCIL**

Pursuant to Section 1.405 of the Commission's Rules, the Utilities Technology Council ("UTC")<sup>1</sup> hereby files the following comments in response to the Notice of Proposed Rulemaking in the above-referenced proceeding.<sup>2</sup> UTC supports the Commission's proposals to add frequency pairs 451/456.00625 MHz and 451/456.0125 MHz, as well as to add frequency pairs 462/467.5375 MHz and 462/467.7375 MHz. In addition, UTC supports the Commission's proposal to permit conditional authority in the bands above 470 MHz. Moreover, UTC supports the Commission's proposal to provide a window of time for incumbent 800 MHz licensees in the market to acquire or expand coverage and improve their quality of service on Expansion Band (EB) B/ILT Pool channels before accepting applications from new entrants.<sup>3</sup> UTC suggests that the window should be six months, and that early access to channels should be expanded to apply to the Guard Band (GB) as well as the Expansion Band, consistent with the EB/GB Petition of

---

<sup>1</sup> UTC was formerly the "Utilities Telecom Council". See [www.utc.org](http://www.utc.org).

<sup>2</sup> In the Matter of Amendment of Part 90 of the Commission's Rules to Improve Access to Private Land Mobile Radio Spectrum, WP Docket No. 16-261, *Notice of Proposed Rulemaking*, 31 FCC Rcd 9431 (2015) ("NPRM").

<sup>3</sup> *Id.* at ¶31.

the Land Mobile Communications Council (LMCC).<sup>4</sup>

## **Introduction**

Established in 1948, UTC is the trade association for the communications and information technology interests of the nation's electric, gas and water utilities, pipeline companies and other critical infrastructure industries. Its members include large investor-owned utilities who serve millions of customers in multi-state service territories, and smaller municipal and cooperatively-organized utilities who may serve only a few thousand customers in remote areas and communities across the country. These members all use communications in support of their core electric, gas and water services. These communications systems are extensive and diverse, including private land mobile communications networks that would benefit from the Commission's proposals in this proceeding.

Utilities and other critical infrastructure industries need access to additional spectrum to meet their increasing communications demands. The Commission's proposals would help to provide utilities and CII with access to additional spectrum by making additional channels available, by providing opportunities for incumbent licensees to apply for 800 MHz channels before new entrants, and by expanding conditional authority to apply to the bands above 470 MHz. Therefore, UTC supports the Commission's proposals, as more fully described below.

### **I. The Commission Should Make Additional PLMR Channels Available**

As the Commission has observed, additional frequencies are available at the edge of the Part 90 PLMR bands, but the Commission has refrained from assigning licenses to use them because it was concerned that it would cause interference to Broadcast Auxiliary Services (BAS) and General Mobile Radio Service (GMRS) on adjacent channels.<sup>5</sup> As the Commission has also observed, those interference concerns are mitigated now by the Commission's narrowbanding policies, which should help to avoid the potential for overlap of the radiofrequency of operations between PLMR and BAS/GMRS systems. For this reason, the Mobility Division of the Wireless Telecommunications Bureau has already granted

---

<sup>4</sup> See Petition for Rulemaking of the Land Mobile Communications Council, RM-11719 (filed Mar. 27, 2014) (LMCC EB/GB Petition).

<sup>5</sup> See *NPRM* at ¶¶6-10.

waivers to permit PLMR licensees to operate with a 4-kilohertz emission designator on frequency pairs 451/456.00625 MHz and 451/456.0125 MHz, as well as on frequency pair 462/467.7375 MHz.<sup>6</sup> There have been no reported instances of interference as a result of the Commission's grant of these waivers. As such, it is appropriate for the Commission to now propose a new rule that would permit what has already been previously granted by waiver.

UTC supports the Commission's proposal to make these frequencies available for Part 90 operations, and it encourages the Commission to allow frequency coordinators to determine whether wider emission designators than 4 kHz should be allowed for operations on these new channels. In addition to opening up additional frequencies for access for Part 90 operations, providing flexibility to use wider emission designators would make more effective use of these frequencies. Moreover, coordinators are uniquely positioned to determine when and where wider emissions could be used without causing interference to other operations. Utilities need access to additional spectrum and allowing the use of wider emission designators will enable them to support higher capacity requirements using existing equipment. Therefore, UTC supports the proposal to make these frequencies available, and it urges the Commission to permit wider emissions than 4 kHz on a case-by-case basis.

## **II. Conditional Authority Above 470 MHz Should Be Permitted**

UTC supports the Commission's proposal to expand conditional authority to apply to frequencies above 470 MHz, including the 800 MHz and 900 MHz I/B and Public Safety Pool frequencies. UTC urges the Commission to expand conditional authority to apply to the T-Band (470-512 MHz) frequencies too, as well as for the 769-775/799-805 MHz (700 MHz) Public Safety narrowband frequencies.

UTC previously filed comments in support of the LMCC's Conditional Authority Petition, and it hereby reiterates its support to expand conditional authority to apply to the 470-

---

<sup>6</sup> See *Mobile Relay Associates, Order, WT Docket No. 14-34, 29 FCC Rcd 7292 (WTB MD 2014)*; and see *Mobile Relay Associates, Order, WT Docket No. 13-212, 29 FCC Rcd 660 (WTB MD 2014)*.

512 MHz, 800 and 900 MHz, as well as the 700 MHz narrowband channels.<sup>7</sup> As UTC explained in its comments, conditional authority on these channels would serve the public interest, because it would allow applicants to put these channels to immediate use while their license applications are pending at the FCC, and it would avoid the time and expense of having to file and process a request for Special Temporary Authority (“STA”).<sup>8</sup> This conserves administrative resources and saves time for licensees to put their facilities into operation. As UTC explained in its comments, utilities and other CII have urgent communications needs, which could be more effectively met through conditional licensing. Therefore, UTC urges the Commission to adopt its proposal to expand conditional authority to the 800/900 MHz channels, and UTC supports extending conditional authority to apply to the 470-512 MHz channels and the 700 MHz narrowband channels.

### **III. The Commission Should Allow Incumbent Part 90 Licensees Access to Expansion Band and Guard Band Frequencies Prior to New Entrants.**

UTC supports the Commission’s proposal to provide a window of time for incumbent Part 90 licensees to apply for available Expansion Band frequencies.<sup>9</sup> UTC also urges the Commission to extend this window to apply to the Guard Band frequencies, as well.<sup>10</sup> In both instances, the Commission should provide incumbent licensees with a six-month window in which to apply for licenses before new entrants.<sup>11</sup>

UTC previously filed comments in support of the EB/GB Petition by the LMCC, because

---

<sup>7</sup> See Reply Comments of UTC in RM-11722 (filed Aug. 7, 2014). See also Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on Land Mobile Communications Council Petition for Rulemaking Regarding Conditional Licensing Authority Above 470 MHz, and Deny Request for Extension of Temporary Waiver, Public Notice, RM-11722, 29 FCC Rcd 7529 (WTB/PSHSB 2014).

<sup>8</sup> Reply Comments of UTC at 3.

<sup>9</sup> See *NPRM* at ¶31.

<sup>10</sup> *Id.* at ¶34 (inviting comment on whether the Commission should provide a window for 800 MHz licensees in a market to acquire, or expand coverage on, GB channels).

<sup>11</sup> *Id.* at ¶32 (inviting comment on the length of the window of time for incumbents to apply for available EB and GB channels before new entrants apply for them).

it agrees with the LMCC that affording incumbents temporary exclusivity to these channels will allow them to address existing needs that have been growing during the rebanding process.<sup>12</sup> In addition, as UTC explained, affording this priority will enable incumbents to upgrade to more efficient systems because the cost will be spread over a larger number of channels.<sup>13</sup>

UTC reiterates that the Commission should provide incumbent licensees with a six-month window of time in which to apply for *both* Expansion Band and Guard Band channels before new entrants are allowed to apply for them. As the Commission has recognized, “[i]ncumbent 800 MHz licensees already have deployed facilities and demonstrated a commitment to utilizing the band in a given market and are unlikely to acquire spectrum for other than operational purposes and can be expected to put additional channels into service promptly to meet existing operational needs.”<sup>14</sup> Providing these incumbents with a head-start to access these channels will allow these incumbents to put these channels to effective use immediately.

Due to the extended time involved with the rebanding process in the 800 MHz band, utilities and other incumbents urgently need access to the EB/GB channels to meet their communications requirements. That is why UTC urges the Commission to provide incumbents with a six-month advance time window to access GB channels (as well as EB channels), because there are relatively few available channels in the Expansion Band compared to those that are available in the Guard Band. Incumbents need access to *both* EB and GB channels.

Providing incumbents a six-month lead-time window to access the EB and GB channels will help incumbents meet their spectrum needs, which have been constrained during the 800

---

<sup>12</sup> Comments of the Utilities Telecom Council in RM-11719 at 3 (filed May 24, 2016)(explaining that there is pent up demand for EB/GB channels, and that providing incumbents with an initial six-month period in which to apply for available EB/GB channels would serve the public interest by helping to relieve this pent up demand.)

<sup>13</sup> See *NPRM* at ¶30, citing Comments of UTC at 4.

<sup>14</sup> *Id.* at ¶31.

MHz rebanding process. The fact that some non-cellular SMR incumbents may also benefit from early access to GB channels should not prevent B/ILT incumbents, including utilities, from gaining early access to those GB channels.<sup>15</sup> There are less restrictive alternative approaches that the Commission could take.

## **Conclusion**

For all the foregoing reasons, the Commission should adopt rules consistent with the comments expressed herein. The Commission should make additional channels available for Part 90 PLMR services. It should allow conditional authority in the bands above 470 MHz. Finally, it should provide incumbents with a six-month window in which to apply for available EB and GB channels before new entrants can apply for them.

Respectfully submitted,

**By:**                     /s/                      
Brett A. Kilbourne  
Vice President & Deputy General Counsel  
United Technology Council  
1129 20<sup>th</sup> Street NW, Suite 350  
Washington, D.C. 20036  
(202) 833-6807  
[brett.kilbourne@utc.org](mailto:brett.kilbourne@utc.org)

Dated: November 22, 2016

---

<sup>15</sup> *Id.* at ¶34 (explaining that the Guard Band includes non-cellular SMR licensees who would stand to benefit if the Commission allowed them to have early access to the GB channels that were made available -- adding that “it is not at all clear that preferring incumbent 800 MHz SMR licensees over potential competitors would further the public interest.”)